

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.267/2009

This the ^{1st} 4th day of ^{August} July, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K. Mishra, Member (A)

Akramul Haque (I.P.S.) son of Late Sri. Salamat Ali, aged about 57 years now attached to D.G.P. Headquarter, Lucknow. Resident of 538 CHH/271 Baba Ka Purwa Khadra Police Station-Hasanganj Sitapur road, Lucknow.

.....Applicant

By Advocate: Sri G.S. Chauhan.

Versus.

1. State of U.P. through its Chief Secretary, U.P. Secretariat, Lucknow.
2. State of U.P. through its Principal Secretary, Home & Karmic Secretariat, Lucknow.
3. State of U.P. through its Secretary, Home Department, Secretariat, Lucknow.
4. Union of India through its Sachiv, Grah Mantralaya, Bharat Sarkar, North Block, New Delhi.
5. Director General of Police, U.P., Lucknow.
6. Inspector General of Police, Zone/Range Kanpur (U.P.).

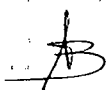
.....Respondents

By Advocate: Shri A.K. Chaturvedi for State of U.P.
Shri Atul Dixit for U.O.I.

ORDER

By Ms. Sadhna Srivastava, Member-J

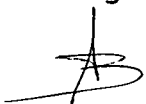
The applicant, who is a member of Indian Police Service has filed this OA, challenging the order dated 31.12.2008 (Annexure-1) by which, the opposite party no 1 to 3 placed him under suspension under Rule-3 of All India Services (Discipline & Appeal) Rules, 1969 in contemplation of disciplinary proceedings under Rule-8 of the said rules of 1969. The further prayer is to quash the charge sheet issued



to him in pursuance of the rules of 1969. The request for interim order has also been made.

2. Earlier, a Single Member of this Bench heard the case on 6.7.2009 on admission. There was no Division Bench sitting on that date i.e. 6.7.2009. The learned member took the view that the matter shall be heard by Division Bench. This is how the matter has come up before us for admission and for hearing on the prayer for interim relief.

3. Relying on Kalish Chand Vs. Union of India AIR 1961 SC 1346, Teeta Garh Paper Mills Limited and Another Vs. State of Orissa and others AIR 1983 (SC) page 603, and S.S. Rathore Vs. State of Madhya Pradesh AIR 1930 (SC) 10, Sri A.K. Chatrurvedi has contended that since the applicant has not availed of statutory remedy of appeal under Rules of 1969, so OA is not maintainable in view of the provisions contained under Sub Section (1) of Section 20 of the Administrative Tribunals Act, 1985. He has also referred to a full bench decision of Hyderabad Bench of this Tribunal to this effect in O.A.No.27 of 1990 B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and another, so as to say that expression "ordinary" used in sub Section (1) does not mean "normally" and "usually". According to him, remedy of appeal against suspension is not an alternative remedy but it is a remedy which has to be exhausted in view of the provisions contained under Sub Section (1) of Section 20, before coming to the Tribunal under Section 19. He argues, nothing special or extraordinary is being alleged or shown for admitting the OA without exhausting that remedy of appeal.



4. We have considered the rival contentions in the light of the provisions contained under Section (1) of Section 20 of Administrative Tribunals Act, 1985 and the said provision so cited. In so far as the OA against the suspension order is concerned, there is no dispute that rules of 1969, do provide a remedy of appeal to the central government. The applicant has not been alleged as to why that remedy was not availed by him or why that remedy would not have proved to be efficacious.

5. It is not a case where the applicant is challenging the vires of any statutory Rules or executive instructions, so as to bring it in the category of extra ordinary case or exceptional case. It is also not a case where the applicant is leveling allegations of malafides against the Central Govt. to which appeal lies against order of suspension. Whether, the act of the applicant constitutes misconduct or not, cannot be examined or gone into here at this stage in view of the settled legal position. We cannot decide the point in issue by examining the correctness or otherwise of the allegations against the applicant. That has to be done in departmental proceedings. Therefore, we are of the view that OA against suspension cannot be entertained, in view of provisions contained under sub Section (1) of Section-20 of Administrative Tribunal Act, 1985. No extraordinary or exceptional ground has been alleged or exists for not availing the remedy of appeal.

6. Besides the fact no material exists on record to infer malafide on the part of authority vested with the power of placing an officer of All India Service under suspension, the learned counsel for the respondents has rightly contended that the power of judicial review



vested in the Court/Tribunal is limited. The Court / Tribunal cannot act as an Appellate forum. The Apex Court in the case of **Secretary to Government, Prohibition & Excise Department Vs. L. Srinivasan, 1996 SCC (L&S) page 686** while quashing the order of Tribunal revoking the suspension had occasion to observe that the Tribunal cannot act as an appellate forum in the matter of revocation of suspension. It has further been contended on behalf of the respondents that the statutory remedy of appeal as provided in Rule-16 of All India Services (Discipline & Appeal) Rules, 1969 has not been availed by the applicant. The Apex Court in the case of **S.A. Khan Vs. State of Haryana & others 1993 SCC (L&S) page -481** while dealing with a case of an IPS officer of State of Haryana, namely, S.A. Khan, dismissed his Writ petition on the ground that statutory remedy of appeal was available to him.

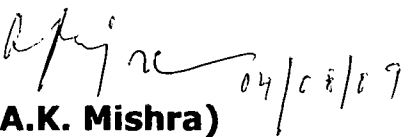
7. In view of what we have stated above the OA is not admitted for hearing and is disposed of with a liberty to the applicant to file an appeal under Rules, 1969, against the suspension order within a period of 15 days from today and if, the same is filed, the authority concerned is directed to consider and dispose of the same in accordance with law as expeditiously as possible say within a period of 2 months from the date such appeal is filed.

8. Before we part, a mention be made that Rule-3 of the Rules of 1969 earlier provided for suspension after the initiation of disciplinary proceedings. The suspension order could not be passed in contemplation of such proceedings. In 1998, the Rule-3 has been amended. Now, it provides that where a member of service against whom disciplinary proceedings are contemplated can be suspended.



Such suspension shall not be valid unless before the expiry of period of 90 days from the date from which the member was suspended, disciplinary proceedings are initiated against him. In the instant case, the applicant was suspended on 31.12.2008 and the charge sheet was served on him within 90 days i.e. 20.2.2009 therefore, the judgment of P.R. Nayak Vs. Union of India (1972) 1 SCC page 332 is not applicable for interpretation of Rule-3 as it exists now after its amendment in 1998.

9. Resultantly, the OA is disposed of without any order as to cost at admission state.


(Dr. A.K. Mishra)
Member-A


(Sadhna Srivastava)
Member-J

Amit/-